9 2-1416

Supreme Court, U.S.
FILED
FEB 3 1993
OFFICE OF THE CLERK

Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

HAL SPEARMAN CRAWFORD,
Petitioner,

V.

THE LANDMARKS GROUP PROPERTIES CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

STANLEY ROBERT HAHN, JR.,
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A. QUESTIONS PRESENTED FOR REVIEW

Whether the Petitioner, Hal Spearman Crawford, was denied his right to trial by jury as guaranteed by The Constitution of the United States, Amendment 7, and by the Georgia Constitution, Article 1, § 1, paragraph 11.

B. LIST OF PARTIES

The parties to this case consist of the Petitioner, Hal Spearman Crawford, and the Respondent, The Landmarks Group Properties Corporation.

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D. REFERENCE TO OPINIONS DELIVERED IN THE CASE

The Supreme Court of Georgia summarily affirmed the lower court's order of summary judgment in this case under Georgia Supreme Court Rule 59. Hence, the judgment was rendered without report or opinion. A copy of Rule 59 is included in the Appendix.

E. JURISDICTIONAL STATEMENT

(i) The judgment sought to be reviewed is the judgment entered on October 16, 1992 by the Supreme Court of Georgia summarily affirming the grant of summary judgment by the Superior Court of Fulton County, Georgia.

(ii) Petitioner's motion for reconsideration was denied by the Georgia Supreme Court on November 6, 1992.

(iii) No cross-petition for a writ of certiorari is anticipated in this case

(iv) Jurisdiction of this matter is conferred on this Court pursuant to 28 U.S.C. § 2104.

F. CONSTITUTIONAL AND STATUTORY PROVISIONS

The Petitioner relies upon his rights under the Constitution of the United States, Amendment 7, which states the following: "In suits at common law, where the value in controversy shall exceed $20.00, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, done according to the rules of the common law."

The Petitioner also relies upon his right to trial by a jury as guaranteed under the Georgia Constitution, Article 1, § 1, paragraph 11, subparagraph (a), which states, "The right to trial by jury shall remain inviolate except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party. . . . "

The Petitioner also relies upon his right to due process of law as guaranteed by the Constitution of the United States, Amendment 14, Section 1, which provides as follows:

> "No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to

any person within its jurisdiction the equal protection of the laws."

G. STATEMENT OF THE CASE

On October 2, 1984, the Petitioner, Hal Spearman Crawford ("Crawford"), sold his home and land to the Respondent, The Landmarks Group Properties Corporation ("Landmark"), for a sum of money based upon the square footage density per acre of the commercial development that was to be built on the property known as Aruba Acres Subdivision ("Aruba Acres").

The central and dispositive issue in this case revolved around paragraph 4 of the sales contract, which required Landmark to pay to Crawford additional compensation for the purchase if the property sold were rezoned to permit a higher density within two years of the closing date on the contract. That paragraph 4 reads as follows:

4. Additional Payment. If, within two (2) years of the Closing Date, all or any portion of the real property presently known as Aruba Acres Sub-

Division (per plat thereof described in Exhibit 'A' hereof) is rezoned to permit a density of development in excess of Thirty-Two Thousand Two Hundred Thirty-Three (32,233) square feet of office space per acre, then Purchaser shall pay to Seller, at the time of such rezoning an amount equal to One and No/100 Dollars ($1.00) (or portion thereof) per square foot of the Property for every One Thousand (1000) square feet of density (or portion thereof) permitted in such rezoning in excess of Thirty-Two Thousand Two Hundred Thirty-Three (32,233) square feet of office space per acre. The square footage of the Property shall be deemed to be Twenty-Two Thousand (22,000) square feet whether or not any portion thereof has been condemned by the State of Georgia or County of Fulton prior to or in conjunction with such rezoning.

This case was filed in the Superior Court, and the Petitioner dismissed his action on two occasions, as allowed

under Georgia Law, for purposes of obtaining new counsel; but at each point in the litigation, the Superior Court steadfastly refused to allow the questions of fact in the case to go to a jury, but it did so in an opinion drafted by opposing counsel, which made no effort to address the voluminous new facts, theories of recovery, and opposing affidavits marshalled by Petitioner in connection with the third filing of the case. Instead, the opinion mirrored the state of facts associated with the first filing in which original counsel filed a 2-page complaint and a 1-page response to defendant's motion for summary judgment. It did not address at all the issue of the sufficiency of the new allegations and opposing affidavits to take the case to the jury. The Georgia Supreme Court upheld the lower court's decision, but did so summarily without according Petitioner the dignity of explaining why his new factual allegations and opposing affidavits, which took issue with defendant's recycled affidavits from the first filing, were insufficient to take the case to the jury. The relevant orders of the Supreme Court and the Georgia Supreme Court are included in the Appendix herein.

This breach of contract case revolves around the meaning of the word "rezoned". It was undisputed that Landmark obtained, within the two year "bonus period" of the contract under which Crawford was to receive additional compensation, a variance from the Fulton County Board of Commissioners under which variance Landmark was allowed to increase the Aruba Acres density above the contractual limitation of 32,233 square feet per acre. This increase, under the contract terms, required Landmark to pay additional compensation to Crawford in an amount which now, with interest, exceeds $1,000,000.00.

At the heart of this case lies the Superior Court decision that the term, "rezoned", as intended by the parties to the instant contract, did not include official variances allowing the density to increase, thus triggering paragraph 4 of the contract. In effect, the Superior Court treated the factual issue of the parties' intent as a matter of law and summarily ruled against Crawford, despite undisputed opposing affidavits from zoning professionals stating that, in the context of the contract, the word "rezoned" was latently and patently ambiguous and would normally be understood to refer to both

variances and changes of use classifications, especially since the Aruba Acres property in question was already "zoned" for office use.

The Superior Court's ruling was based primarily upon two affidavits submitted by the Respondent, from neither experts nor authorities, in support of its motion for summary judgment. One affidavit was submitted by a Fulton County Commissioner and the other by an attorney, both stating that, technically speaking, the Aruba Acres property had not been "rezoned". Crawford offered in opposition to those affidavits, affidavits of real estate experts and zoning officials, who testified that the word "rezoned" was understood in the marketplace in 1984 to include precisely the type of variance granted Landmark for the Aruba Acres property.

This question of what the parties intended when they used the word "rezoned" is a factual issue on which the Petitioner was entitled to a jury trial, which the Court summarily and unconstitutionally refused to grant.

That constitutional deprivation was gravely compounded from a due process point of view by the fact that no court — trial or appellate — would give Petitioner the dig-

nity of a simple statement of explanation of why his new allegations and undisputed affidavits were insufficient to take the case to the jury.

H. METHOD OF RAISING FEDERAL QUESTION

The Petitioner, upon the filing of his complaint, immediately raised the issue of his right to a jury trial by demanding same, as he was entitled to do by the rights afforded to him under the United States Constitution and, further, under the Constitution of the State of Georgia. That demand for a jury trial was made in paragraph 2 of the ad damnum clause of the complaint filed by the Petitioner which initiated this litigation.

I. BASIS FOR FEDERAL JURISDICTION

This petition is based upon a judgment of a State Court and not of a United States Court of Appeals.

I. CONCISE ARGUMENT FOR ALLOWANCE OF THE WRIT

The questions presented in this case offer this Court the opportunity to alter a disturbing and accelerating trend that virtually any legal practitioner has noticed over the years, that is, the erosion of the right to a jury trial through the disturbing combination of summary trial and appellate procedures. Trial courts, at an ever increasing pace, are, by the vehicle of summary judgment and directed verdict, taking factual issues away from the jury and summarily deciding them according to the court's own opinion as to what the facts are.

Our forefathers were so intent upon instituting and preserving the right of a litigant to have the facts of the case decided by his peers, that the right to trial by jury was safeguarded by inclusion in our original Bill of Rights. U.S. Const. amend. VII. This right is so long ingrained in our system and is so precious that its importance scarcely needs to be argued.

The State of Georgia, likewise, constitutionally extends this right granted under the federal Bill of Rights

independently to the citizens of the State of Georgia by virtue of the right to jury trial provision of the Georgia Constitution. Ga. Const. art. 1, § 1, paragraph 11. Even though that portion of the Georgia Constitution states that the "right to trial by jury shall remain inviolate . . . ", the Georgia Supreme Court has allowed the Petitioner's right to jury trial to be appropriated without so much as stating the reason therefor.

The word "rezoned" is ambiguous and subject to different interpretations, as it appears in the contract between the parties. Under Georgia law, "words generally bear their usual and common signification; but technical words, words of art, or words used in a particular trade or business will be construed, generally, to be used in reference to this particular meaning. The local usage or understanding of the word may be proved in order to arrive at the meaning intended by the parties." O.C.G.A. § 13-2-2 (2). (Emphasis supplied).

Expert testimony was offered by the Petitioner in the form of affidavits stating that the term "rezoned" could be used in various contexts and that the usage apparently intended by the parties in the instant contract included the variance such as the one granted to Landmark increasing the

density. Such expert testimony and other extrinsic evidence as to the intended usage of the term are admissible in evidence. See Tarbutton v. Duggan, 45 Ga. App. 31, 163 S.E. 298 (1932). Such extrinsic evidence is "always receivable to define and explain" technical terms and terms with more than one popular meaning. 30 Am. Jur. 2d, Evidence § 1075.

While, in the scheme of things, this case may be monetarily of lesser significance than many of the grave and urgent matters of which review before this Court is sought, the erosion of the rights of the common man to have a jury of his peers (laymen, not attorneys or judges) decide his case is so antithetical to our idea of justice that the overstatement of its importance is virtually impossible.

Despite previous failure by this Court to incorporate the Seventh Amendment, it has been cogently argued that the Seventh Amendment was "something of a popular ark of the covenant—one of the most sought-after provisions in the Bill of Rights." G. Butler. "Compensable Liberty: An Historic and Political Model of the Seventh Amendment Public Law Jury", 1 Notre Dame J. Law, Ethics, P. Pol'y 595, 634 (1985). It has also been documented how "arrogant" appel-

late courts during the late nineteenth and early twentieth centuries began systematically to curtail the operation of the jury as the democratic "hands" of the judiciary. See, e.g., id. at 726-738. That process clearly exceeds due process limits where the trial and appellate courts in conjunction offer the citizen no direct explanation of why his allegations and opposing affidavits are insufficient to take his case to the jury. Instead, the order by the trial court in this case directly tracks the order awarding attorney's fees to the defendant below after dismissal of Petitioner's first exiguous filing (by less than diligent counsel) and gives no recognition to the plethora of new factual allegations and the new opposing affidavits (specifically designed to contest the recycled affidavits from the first filing used by the defendant below), much less any direct explanation for why this mass of new materials was insufficient to trigger Petitioner's sacred right to a jury trial. Such an explanation by either the trial or appellate court should be a conditio sine qua non for any denial of the right of civil jury trial, otherwise preserved inviolate by the local state constitution.

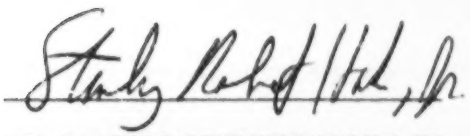
Petitioner implores the Court to grant his petition so that all will know that the sacred right of trial by jury guaranteed to us by our forefathers cannot be summarily ignored by the state without the dignity of some explanation that directly addresses a citizen's claim that there are material issues of disputed fact.

K. APPENDIX

The following documents are appended hereto:

1. Order of the Supreme Court of Georgia denying Petitioner's motion for reconsideration, dated November 6, 1992.
2. Order of the Supreme Court of Georgia affirming without opinion the Order and Judgment of the Superior Court of Fulton County, dated October 16, 1992.
3. Order and Judgment of the Superior Court of Fulton County of September 15, 1991.
4. A copy of Rule 59 of the Rules of the Supreme Court of Georgia.

RESPECTFULLY SUBMITTED,



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APPENDIX

SUPREME COURT OF GEORGIA

ATLANTA NOVEMBER 06, 1992

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Case No. S92A0524

HAL SPEARMAN CRAWFORD V. LANDMARKS GROUP PROPERTIES CORPORATION

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be herby denied. CLARKE, C.J., BELL, P.J., HUNT, BENHAM, FLETCHER, AND SEARS-COLLINS, JJ., CONCUR.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal or said court affixed the day and year last above written.

Sherie M. Wlech, Acting Clerk.

In the Supreme Court of Georgia

Decided: OCT 16 1992

S92A0524. CRAWFORD v. LANDMARKS GROUP PROPERTIES CORP.

PER CURIAM.

Judgment affirmed without opinion pursuant to Rule 59. Clarke, C.J., Bell, P.J., Hunt, Benham, Fletcher and Sears-Collins, JJ., concur.

FILED IN OFFICE

SEP -5 1991

DEPTUY CLERK SUPERIOR COURT
FULTON COUNTY, GA

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

HAL SPEARMAN CRAWFORD,	)	
	)	CIVIL ACTION
Plaintiff,	)	FILE NO. D-85730
	)	
v.	)	
	)	
Defendant.	)	
THE LANDMARKS GROUP PROPERTIES CORPORATION,	)	
	)	
	)	
Defendant.	)	

ORDER AND JUDGMENT

Defendant has brought before the Court a MOTION FOR SUMMARY JUDGMENT on all three counts of Plaintiff's Complaint pursuant to O.C.G.A. § 9-11-56. Both parties have filed briefs with respect to this Motion and the Court has heard oral argument on this Motion. After careful examination of all items of record, the Court finds and concludes as follows:

FINDINGS OF FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED

1. On October 2, 1984, Plaintiff, Hal Spearman Crawford (hereinafter "Crawford" or "Plaintiff") entered into a Real Estate Sales Contract (hereinafter "the Contract") with the Defendant, The Landmarks Group Properties Corporation (hereinafter "Landmarks" or "Defendant"), providing for the sale by Crawford to Landmarks of his land and residence at 5930 Aruba Circle, Sandy Springs, Fulton County, Georgia. (Complaint ¶ 60 and Ex. "C" to Complaint).

2. The purchase price to be paid by Landmarks to Crawford for said property was $660,000.00, all of which amount was timely paid in full to Crawford by Landmarks. (See Exhibit "C" to Complaint).

3. The closing of the sales transaction contemplated by the Contract occurred on October 16, 1984. (Complaint, ¶ 61).

4. Paragraph 4 of the Contract contained a provision providing a contingency for the payment to Crawford of an additional sum of money in the event within two years of the closing date the property was "rezoned to permit a density of development in excess of Thirty-Two Thousand Two Hundred Thirty-Three (32,233) square feet of office space per acre." (Ex. "C" to Complaint); (Deposition of Hal Spearman Crawford, taken November 3, 1988, Ex. 5 in Civil Action File No. D-61244 in the Superior Court of Fulton County) (hereinafter "First Case: Crawford Dep.") (References to pleadings or other matters filed in Civil Action File No. D-61244 in the Superior Court of Fulton County will hereinafter be prefaced by 'First Case:" followed by the name of the pleading or other matter. These pleadings were used as evidence in the present action pursuant to Brantley v. State, 121 Ga. App. 79, 80, 172 S.E.2d 872 (1970)).

5. Prior to the time the Contract was signed by Crawford on October 2, 1984, the property referenced in Paragraph 4 of the Contract as the Aruba Acres Subdivi-

sion (hereinafter "the Aruba Property") had already been rezoned to permit a density of development of 32,233 square feet of office space per acre. (First Case: Affidavit of Michael L. Lomax, dated December 20, 1988, ¶ 5, 6) (hereinafter "First Case: Lomax Aff."); (First Case: Affidavit of Carl E. Westmoreland, Jr., dated December 21, 1988, ¶ 4, 5) (hereinafter "First Case: Westmoreland Aff."); (First Case: Crawford Dep., p.68).

6. The density of 32,233 square feet of office space per acre had been zoned by the Fulton County Board of Commissioners as part of an "Office and Institutional" rezoning of the Aruba Property and certain contiguous property at a public hearing held on December 7, 1983. (First Case: Lomax Aff., ¶ 4; First Case: Westmoreland Aff., ¶ 5). The rezoning instituted by the Fulton County Board of Commissioners at this public hearing was issued in connection with an Application and Masterplan filed by Landmarks with the Board of commissioners for Landmarks' proposed development of a suburban multi-use retail, hotel, sporting, and office

complex to be known as "Concourse". (First Case: Lomax Aff., ¶ 5; First Case: Westmoreland Aff., ¶ 5).

7. In his deposition, Crawford admitted that as early as April 9, 1984, he personally obtained the minutes of the public hearing held on December 7, 1983, (First Case: Crawford Dep., p. 193) and that he used these minutes to confirm and establish the figure of 32,233 square feet of office space referenced in Paragraph 4 of the Contract as the threshold figure which would need to be rezoned before any additional payments would be

required under Paragraph 4 to be paid to him by Landmarks. (First Case: Crawford Dep., pp. 68, 202).

8. Crawford was represented by counsel of his choosing at all times throughout the negotiations and drafting of the Contract and at the closing of the sales transaction contemplated by the Contract. (First Case: Crawford Dep., pp. 62, 209; Complaint, ¶ 42, 43). The counsel who represented Crawford in the negotiation and drafting of the Contract and at the closing of the sales

transaction testified in his deposition that Crawford instructed him to tie Paragraph 4 to "zoning density" and to make it operative if a "rezoning" took place, and that "that's what he got." (First Case: Deposition of C. Gray Bethea, Jr. taken February 1, 1989, pp 20-22) (hereinafter "First Case: Bethea Dep."). The "zoning density" that was applicable, according to a letter written to Crawford by the attorney who represented him was the density of 32,233 square feet of office space per acre set forth in the minutes of the December 7, 1983 public hearing, which Crawford's attorney stated was "the Zoning Ordinance affecting the density of [the] property in reference to numbered Paragraph 4 of the [Contract]." (First Case: Bethea Dep., Ex. 10).

9. The attorney who represented Crawford in the contract negotiations testified that:

> Mr. Crawford was intimately involved in the status of the zoning of Aruba Acres Subdivision and particularly his property. Mr. Crawford knows or knew a good many of

the political figures out there and make it his business, quite rightly so, to know what was

happening to his property insofar as zoning was concerned.

(First Case: Bethea Dep., pp. 20-22).

10. On July 2, 1984, four months before the Contract was signed, a public hearing was held before the Fulton County Board of Commissioners with respect to the property. (First Case: Lomax Aff., ¶ 6; First Case: Westmoreland Aff., ¶ 6; First Case: Crawford Dep., Ex. 14). In connection with this hearing, Landmarks filed as a matter of public record and presented in full view a "Concourse Masterplan", dated May 1, 1984, which showed, among other things, two sixteen story buildings containing a combined total of 969,080 square feet of office space. (First Case: Lomax Aff., ¶ 6; First Case: Westmoreland Aff., ¶ 6; Ex. B to the Westmoreland Aff.) This Masterplan was approved by the Fulton County Board of Commissioners at the July 2, 1984 hearing. (First

Case: Lomax Aff., ¶ 6; First Case: Westmoreland Aff., ¶ 6). The density of the property was recognized by the Board of Commissioners even with this approved plan as remaining at 32,233 square feet of office space per acre. (First Case: Lomax Aff., ¶ 6; First Case: Westmoreland Aff., ¶ 6). Crawford appeared at this hearing and spoke stating that he was "not opposed to the requested density." (First Case: Crawford Dep., Ex. 14, p.5).

11. During the two-year period following the closing of the sale of Crawford's property to Landmarks on October 16, 1984, the density for office space for the Aruba Property remained zoned at 32,233 square feet of office space per acre. As of December 21, 1988, the

density for office space for the Aruba Property remained zoned at 32,233 square feet of office space per acre. (First Case: Lomax Aff., ¶ 4; First Case: Westmoreland Aff., ¶ 4). These facts were admitted by Crawford in his deposition testimony. (First Case: Crawford Dep., p. 124)

12. Landmarks has at all times complied with the zoned density requirement of 32,233 square feet of office space per acre in its actual development of the Aruba property and in all of the Applications and Masterplans which it has presented to the Fulton County Board of Commissioners. (First Case: Lomax Aff., ¶ 4; First case: Westmoreland Aff., ¶ 4).

13. Landmarks sold a sizeable portion of the Aruba property to a third party in December, 1987 (First Case: Landmarks' Response to Plaintiff's First interrogatories, Response to Interrogatory No. 4), which was over a year after the conclusion of the two-year contract period under Paragraph 4 and more than three years before Crawford first raised a claim for "reformation" of Paragraph 4 in his February 27, 1991 Complaint. (See Complaint, Counts II and III).

CONCLUSION

Defendant's Motion for Summary Judgment on Count I of Plaintiff's Complaint is grated because the undisputed and admitted facts show that Landmarks has

not breached Paragraph 4 of the Contract. "It is well established that the existence or nonexistence of an ambiguity in a contract is a question of law to be determined by the Court." Stone Mountain Scenic Railroad, Inc. v.

Stone Mountain Memorial Association, 230 Ga. 800, 810, 199 S.E.2d 216 (1973). See also, Heyman v. Financial Properties Developers, Inc., 175 Ga. pp. 146, 332 S.E.2d 893 (1985); Cassville-White Associates, Ltd. v. Bartow Associates, Inc., 150 Ga. App. 561, 564, 258 S.E.2d 175 (1979). The Court determines that the language of Paragraph 4 of the Contract is plain and unambiguous and that it provided additional compensation to Crawford only if during the relevant two-year period the property were rezoned to increase the square footage above the established density of 32,233 square feet of office space per acre. Moreover, the Court finds that the deposition admissions of both Crawford and the counsel who represented him in the contract negotiations are consistent with this interpretation. There can be no dispute of fact

that as of December 20, 1988, the property had not been rezoned to increase the square footage of office space above 32,233. Indeed, Plaintiff admitted in deposition testimony that the density level of the Aruba Property remained at 32,233 square feet. Plaintiff is therefore not entitled to additional compensation under Paragraph 4 of the Contract.

Summary judgment is also granted to Defendant on Count II of Plaintiff's Complaint alleging mutual mistake of fact. Any mistake made by Crawford as to the legal effect of a zoning action is not a mistake of fact as he alleges, but rather a mistake of law. See Gignilliat v. Borg, 131 Ga. App. 182, 183, 205 S.E.2d 479 (1974) ("[W]hether land has been zoned, and if so, the uses which may be made of the land under the applicable law

the uses which may be made of the land under the applicable law or ordinance is a matter of law."). Consequently, it cannot serve as a ground for either defensive or affirmative relief. Atkinson v. Atkinson, 254 Ga.70, 74,

326 S.E.2d 206 (1985). See American Security Van Lines, Inc. V. Amoco Oil Co., 133 Ga. App. 368, 369, 210 S.E.2d 832 (1974) ("everyone is presumed to know the law and cannot in legal contemplation be deceived by erroneous statements of law . . . . "); Gignilliat v. Borg, 131 Ga. App. 182, 183, 205 S.E.2d 479 (1974) ("One is presumed to know what zoning regulations do or do not permit."). In addition, Plaintiff has failed to show by clear, unequivocal and decisive evidence that either party was, in fact, mistaken, much less that both parties were mistaken. O.C.G.A. § 23-2-21. Indeed, there is no evidence that Landmarks was mistake and there is substantial evidence that Crawford had access to public hearings, documents, and master plans by which he knew, or should have known the effects of the zoning matters affecting the Contract and the property. In such a case, "equity shall not grant relief . . . ." O.C.G.A. § 23-2-29; Cox v. Smith, 244 Ga. 280, 283, 260 S.E.2d 310 (1979). See Hill v. Century 21 Max Stancil Realty Inc., 187 Ga. App. 754, 755-56, 371 S.E. 2d 217 (1988). Finally, Plaintiff's delay in seeking to reform

the Contract based on an alleged mistake of fact until four-and-a-half years after Defendant's obligation under the Contract expired and after Defendant had relied on the Contract's terms to govern its conduct (including selling a portion of the property

to a third party) bars Plaintiff under the doctrine of laches. See Lamas v. Citizens and Southern National Bank, 241 Ga. 349, 350, 245 S.E.2d 301 (1978).

Summary judgment is also granted to Defendant on Count III of Plaintiff's Complaint. Any alleged misrepresentation of law made by Defendant to Plaintiff during adversarial contract negotiations in which Plaintiff was represented by counsel is an insufficient basis on which to seek reformation of an instrument as a matter of law. See Hill v. Century 21 Max Stancil Realty, Inc., 187 Ga. App. 754, 755-56, 371 S.E.2d 217 (1988); Mahler v. Paquin, 142 Ga. App. 582, 585, 236 S.E.2d 512 (1977). See also Gignilliat V. Borg, 131 Ga. App. 182, 183, 205 S.E.2d 479 (1974). Further, Count III is also barred by laches due

to Plaintiff's delay in seeking to reform the Contract for the same reason that Count II is so barred. See Lamas v. Citizens and Southern National Bank, 241 Ga. 349, 350, 245 S.E.2d 301 (1978).

Therefore, summary judgment is hereby GRANTED in favor of Defendant as to the entirety of Plaintiff's Complaint.

AND IT IS SO ORDERED.

This the 29th day of Aug, 1991.

/s/ Isaac Jenrette

ISAAC JENRETTE
Judge, Superior Court
Atlanta Judicial Circuit

[Signature continued on next page]

[Signature continued from previous page]

Prepared and presented by:

/s/ Robert W. Webb, Jr.

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RULE 54

Oral argument by counsel in appeals where a death penalty was imposed is mandatory. Otherwise unless expressly ordered by the court, oral argument is never mandatory and argument may be submitted by briefs only.

RULE 55. [RESERVED]

X. OPINIONS AND JUDGMENTS

RULE 56

Each judgment shall show on its face the votes, nonparticipation, or disqualification of each Justice.

RULE 57

A disqualified Justice shall be replaced by a Judge whenever deemed necessary or upon reasonable request by any party.

RULE 58

Justices concurring agree with the opinion and judgment. Justices concurring specially or in the judgment only do not agreement with all that is said in the opinion. Justices dissenting disagree with the opinion and judgment.

RULE 59

Affirmance without opinion may be rendered when the court determines one or more of the following circumstances exists and is dispositive of the appeal:

(1) The evidence supports the judgment;

(2) No harmful error of law, properly raised and requiring reversal, appears;

(3) The judgment of the court below adequately explains the decision and an opinion would have no precedential value.

RULE 60

Remittiturs shall be transmitted to the court from which the case was received as follows:

(1) In death sentences as provided by Georgia Laws 1971, p. 212 (OCGA § 5-6-11);

(2) In other cases as soon as practicable after the expiration of 10 days after the entry of the judgment or upon the denial of a motion for rehearing, unless otherwise ordered. (Motions for Rehearing - see Rule 47).

RULE 61. CERTIORARI FROM UNITED STATES SUPREME COURT - STAY OF REMITTITUR

Any party desiring to have the remittitur stayed in this court in order to appeal or seek a writ of certiorari in the United States Supreme Court shall file in this court a motion to stay the remittitur with a concise statement of the issues to be raised on appeal or in the petition for certiorari. Such notice shall be filed at the time of filing a motion for rehearing, or if no motion for rehearing is filed, within the time allowed for the filing of same.

XI. MISCELLANEOUS

The court prescribes no particular arrangement for briefs, motions, applications for appeal or certiorari, or other papers. However, Rule 16 and Rule 40 specifying certain paper, margins, spacing and size must be complied with and page references to the record (R-) and to the transcript (T-) are essential. Copies must be legible. Thin paper which shows the following page or indistinct photo copies are unacceptable. The volume of cases necessarily suggests that

all matters be presented succinctly. Inclusion of extraneous facts and frivolous issues tends to obscure critical issues. Recitations showing compliance with rules authorizing appeals or applications are unnecessary. If compliance is contested, answers may be filed.

Generally, a presentation by the moving party in the following order, where applicable, is the most efficient:

(1) Type of case, showing Supreme Court jurisdiction;

(2) Judgment appealed and date of entry;

(3) Brief statement of each legal issue with parenthetical reference to the enumeration of errors number;

(4) Brief statement of facts showing the general nature of the case;

(5) Enumeration of errors. (See Rule 39);

(6) Argument in sequence with the enumeration of errors (including additional facts where essential), and citation of authorities;

(7) Certification of service.

Supreme Court, U.S.
FILED
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No. 92-1416

IN THE

Supreme Court of the United States of America

OCTOBER TERM, 1992

HAL SPEARMAN CRAWFORD,

Petitioner,

vs.

THE LANDMARKS GROUP PROPERTIES CORP.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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March 10, 1993

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STATEMENT OF THE CASE

The lawsuit from which this appeal is taken is the third lawsuit Petitioner has filed against Respondent alleging the same breaches of the same provision of the same contract. Petitioner voluntarily dismissed his first suit just two days before a hearing on Respondent's pending Motion for Summary Judgment. Soon after Petitioner's dismissal of his first suit, Respondent promptly and successfully moved for an award of attorneys' fees and costs pursuant to Georgia's attorneys' fees statute. In granting Respondent's Motion for Fees and Costs, the trial court in the first case found that Petitioner's lawsuit did not "exhibit a justiciable issue of law or fact and lacked substantial justification."

Approximately a year and a half after the dismissal of the first suit, Petitioner filed a second lawsuit. As in the first suit, Petitioner alleged a breach of the same provision of the same contract. Also as in the first suit, Petitioner voluntarily dismissed his second suit, this time under threat of an "abusive litigation" claim by Respondent.

Petitioner filed the same lawsuit yet a third time. The third suit terminated in Respondent's favor when the court granted Respondent's Motion for Summary Judgment as to each count in Petitioner's Complaint. The court's grant of summary judgment in Respondent's favor in the third suit is the basis of the instant appeal.

Respondent moved for summary judgment as to all counts in Petitioner's Complaint in the third suit and on September 5, 1991, after full briefing and oral argument, the trial court entered an Order granting Respondent's Motion for summary judgment in this case as to each count. With regard to the contractual provision at issue ("Paragraph 4"), the trial court found that the undisputed and admitted material facts showed that Respondent did not breach Paragraph 4. The trial court found, as a matter of law, that the language of Paragraph 4 of the Contract was plain and unambiguous and that it provided additional compensation to Petitioner **only if** during the relevant two-year period the property were **rezoned** to increase the square footage above the established density of square feet of office space per acre. The court determined that the undisputed evidence and *Petitioner's*

own deposition admissions demonstrated that the zoned density level of the subject property remained the same during the two-year period.

Contrary to Petitioner's allegations and as evidenced by the trial court's Order itself (a copy of which is annexed to Petitioner's Petition), the trial court fully considered the relevant evidence submitted by the parties and determined after consideration of that evidence that the undisputed material facts and Petitioner's own sworn deposition testimony entitled Respondent to judgment in its favor as a matter of law. The court's lengthy, well-reasoned, and thorough Order in the third case is not, on its face, as suggested by Petitioner, merely a "rubber stamp" approval of the trial court's previous Order in the first case.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

According to the questions presented and statutes implicated by Petitioner, the sole basis for his Petition to this Court is a challenge to the constitutionality of the entry of summary judgment against him. Specifically, Petitioner claims that the entry of summary judgment against him violated his constitutional rights to a civil jury trial under the Seventh Amendment and the Georgia Constitution, as well as his due process rights under the Fifth and Fourteenth Amendments.

Court's have uniformly and repeatedly rejected the very arguments presented by Petitioner. It is well-settled that the grant of summary judgment against a litigant does not violate that litigant's Seventh Amendment right to a jury trial. *Greg v. U.S. Industries, Inc.*, 715 F.2d 1522, reh'g granted, in part, clarified, 721 F2d 345 (11th Cir. 1983), *cert. denied*, 466 U.S. 960 (1984); *Barrett v. Independent Order of Foresters*, 625 F.2d 73 (5th Cir. 1980). Likewise, the grant of summary judgment does not violate a litigant's Fifth and Fourteenth Amendment rights. *Oglesby v. Terminal Transport Co., Inc.*, 543 F.2d 1111 (5th Cir. 1976). Finally, the entry by the court of a judgment against a

litigant as a matter of law (whether through directed verdict or summary judgment) does not violate that litigant's due process rights or rights to a jury trial under the Georgia Constitution. *Howard v. Atlantic Coast Line Railroad Co.*, 84 Ga. App. 307, 316, 66 S.E.2d 87 (1951); *see also, Porter Coatings v. Stein Steel & Supply Co.*, 247 Ga. 631, 278 S.E.2d 377 (1981). Accordingly, Petitioner's claims raise no legitimate basis for the review of the decision of the Georgia Supreme Court affirming the trial court's grant of summary judgment in Respondent's favor.

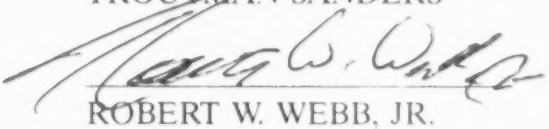
Finally, although Petitioner now contends that the grant of summary judgment against him by the trial court violated certain of his state and federal constitutional rights, he failed to raise as error any such violation of his constitutional rights in the proceedings below, a fact which is noticeably confirmed by the Petition which he has filed in this Court. Because he failed to raise any constitutional questions as enumerations of error in his appeals below, Petitioner struggles in his Petition before this Court to allege that his method of raising a federal question in the court below was the pro forma jury trial demand set forth in his Complaint. Since this routine demand was not included in a pleading that was submitted before Respondent's summary judgment motion was even filed, and since it was never mentioned in Petitioner's responses to Respondent's motion or in any of Petitioner's arguments to the trial court or the Georgia Supreme Court, it hardly can be cited as the method for raising a federal question in the proceedings below. Petitioner's failure to raise any constitutional challenges in the courts below serves to underline the frivolous nature of his current Petition, and provides yet a further basis for the denial of his Petition. *Cato v. Collins*, 539 F.2d 656 (8th Cir. 1976); *Allen v. Beneficial Finance Co. of Gary, Inc.*, 531 F.2d 797, *cert. denied*, 429 U.S. 885 (1976).

CONCLUSION

For the foregoing reasons, this Court should deny Petitioner's petition for Writ of Certiorari to the Supreme Court of Georgia. Additionally, given Petitioner's history of frivolous litigation against Respondent and the absence of merit in his Petition, Respondent respectfully requests that this Court assess costs against Petitioner and award damages to Respondent pursuant to this Court's Rules.

Respectfully submitted,

TROUTMAN SANDERS



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Dated: March 10, 1993